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Subject
LS-1747

Chief, Organization and Methods Service

4 November 1952

General Counsel

Legal Implications Arising Out of the Proposed Appointment of Consultants or Experts as Members of Duly Constituted Agency Committees.

1. This office has been requested to review possible legal prohibitions to the appointment of consultants or experts as members of constituted Agency committees. This request has been made in connection with a study now being undertaken by the Office of Organization and Methods to determine whether the workload on certain higher-level officers of this Agency may be alleviated by relieving them of certain committee assignments and substituting consultants or experts in their places.

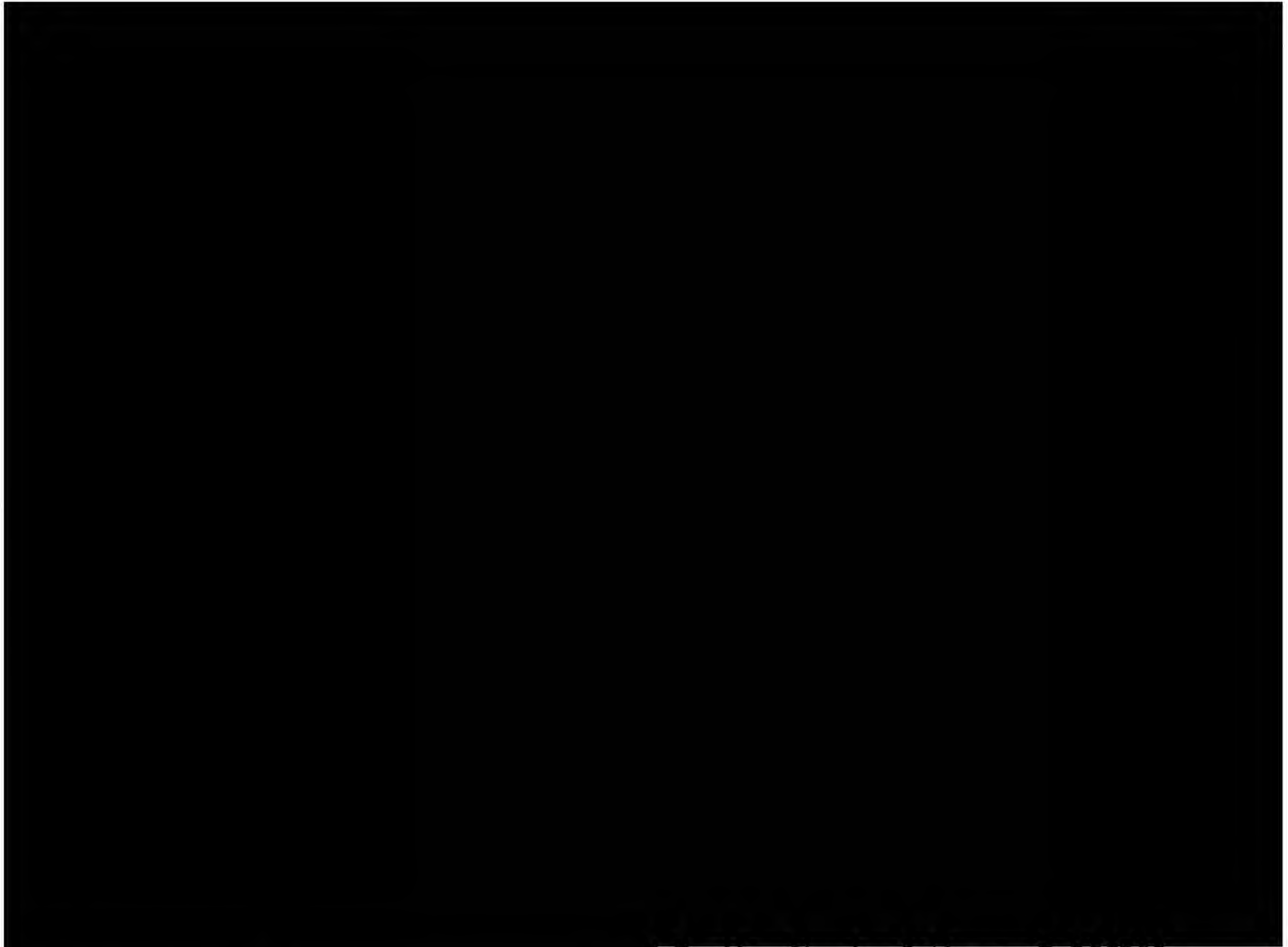
2. The appointment of consultants or experts to membership on committees raises certain legal considerations. The term "consultant" connotes one who advises but who does not take final action or exercise supervisory powers. An expert, on the other hand, is one with particular qualifications or ability who may take final action or exercise supervisory powers.

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In the first of these, B-103199, 30 Comp. Gen. 495, the Comptroller General in advising the Secretary of Commerce on June 7, 1951 said:

"Accordingly, if as understood from the facts submitted in connection with....(the instant case), there is prevailing in your department or in agencies under your jurisdiction, the practice of employing experts and consultants in positions properly within the purview of the classification laws, or of retaining them in the status of experts or consultants after the duties required of them have developed into positions within the purview of the said laws, such practice should be discontinued immediately as exceptions against illegal expenditures for salary, per diem payments, and traveling expenses in such cases will be taken by this Office in the audit of the accounts of the fiscal offices involved." 30 Comp. Gen. 495, 497.

In the second, B-107153, 31 Comp. Gen. 372, the Comptroller General in again advising the Secretary of Commerce on February 11, 1952, said:

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"The general rule established by decisions of the accounting office is that purely personal services may not be obtained on a contractual basis but are required to be performed by regular employees who are responsible to the Government and subject to its supervision. 18 Comp. Gen. 539; 19 id. 594. Exceptions to such rule have been recognized in a few cases where employees were not available or qualified to perform the work involved and where unusual conditions encountered in the accomplishment of an object for which a particular appropriation was made so necessitated. In this connection, it may be observed that the requirement is one of policy rather than positive law and, when it is administratively determined that it would be substantially more economical, feasible, or necessary by reason of unusual circumstances, to have the work involving personal services performed by non-Government parties, and that is clearly demonstrable, this office will not object to procurement of such work through proper contract and agreement." 31 Comp. Gen. 372, 373.

6. There is discernible in these decisions a rule, partly of law and partly of policy, that consultants and experts should not be employed in positions properly within the purview of the classification laws where unusual circumstances justifying such employment cannot be found.

We do not interpret this rule, therefore, as barring this Agency from using consultants and experts on administrative committees where it may reasonably be determined that such use is necessary to the proper and efficient conduct of this Agency's functions. For example, we believe a determination that the operational responsibilities of an individual are jeopardized by the disproportionate time he is required to spend on committee work would justify the appointment of a consultant or expert to relieve him of his committee duties. Furthermore, certain areas of committee work are of a highly specialized and technical nature demanding professional skills. We believe that the appointment of experts to participate in such work is entirely legitimate and in keeping with normal Government concepts. In summary, it is our opinion that the General Accounting Office will not question the appointment of any consultant or expert where a reasonable determination can be made that the appointment was necessary to the proper and efficient conduct of this Agency's functions.

LAWRENCE R. HOUSTON

OGC/LRH/GHK:imn

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